

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

VELIA ORTEGA,

*Plaintiff,*

v.

MACY'S WEST STORES, INC.

*Defendant.*

Civil Action No. \_\_\_\_\_

**DEFENDANTS' NOTICE OF REMOVAL**

COMES NOW Defendant Macy's West Stores, Inc. ("MWSI" or "Defendant") and files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. As grounds for removal, the Defendant states as follows:

**I. STATE COURT ACTION**

1. This action was originally filed on October 8, 2019 in the 120th District Court for El Paso County, Texas and is styled *Velia Ortega v. Macy's West Stores, Inc.*, Case No. 2019DCV3969. On October 21, 2019, the Defendant received notice of this lawsuit. Certified copies of all documents filed in the Lawsuit are attached hereto and incorporated herein as **Exhibit A.**

**II. THIS COURT HAS DIVERSITY JURISDICTION**

**A. The Amount in Controversy Exceeds \$75,000.00, Exclusive of Interest and Costs**

2. As evidenced on the face of the Petition, Plaintiff states that the damages she seeks in this case exceed \$200,000 but not more than \$1,000,000. (Pl.'s Orig. Pet. ¶ 32).

**B. Diversity of Citizenship Exists**

3. This action is between citizens of different States. The citizenship of a natural person for diversity purposes is determined by the person's domicile. *Coury v. Prot*, 85 F.3d 244, 249 (5th Cir. 1996). "Domicile requires the demonstration of two factors: residence and the intention to remain." *Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 793, 798 (5th Cir. 2007). "In determining a litigant's domicile, the court must address a variety of factors. No single factor is determinative. The court should look to all evidence shedding light on the litigant's intention to establish domicile. The factors may include the places where the litigant exercises civil and political rights, pays taxes, owns real and personal property, has driver's and other licenses, maintains bank accounts, belongs to clubs and churches, has places of business or employment, and maintains a home for his family." *Coury*, 85 F.3d at 251.

4. Plaintiff is a citizen of, and has demonstrated an intent to remain in, the State of Texas. Plaintiff is currently a resident of El Paso County, Texas. (Pl.'s Orig. Pet. ¶ 2); *Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954) (holding "the place of residence is prima facie the domicile").

5. Defendant Macy's West Stores, Inc. is an Ohio corporation with its principal place of business in New York, New York. *See Hertz Corp. v. Friend*, 559 U.S. 77 (2010).

6. In accordance with 28 U.S.C. § 1332, there is complete diversity of citizenship because Plaintiff (Texas) is a citizen of a state different than Defendant Macy's, West Stores, Inc. (Ohio, New York). *See* 28 U.S.C. § 1332(a)(1)(c)(1).

**III. THE NOTICE OF REMOVAL IS PROCEDURALLY PROPER**

7. Based on the foregoing, this action is a civil action of which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332 and may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446.

8. Venue lies in the United States District Court for the Western District of Texas because, pursuant to 28 U.S.C. §§ 1391(a) and 1441(a), the state court action was filed in El Paso County and this is the judicial district and division in which the action arose.

9. Because this action was served within 30 days of the filing of this Notice of Removal, this removal is timely in accordance with 28 U.S.C. § 1446.

10. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the original petition, summonses, civil case information sheet, and other documents, which are all of the pleadings served or filed in the state court lawsuit, are attached hereto as Exhibit A. No other process, pleadings, or orders have been served or filed in this action.

11. Plaintiff did request a jury trial in the state court action.

12. Upon information and belief, there are no other Defendants in this matter from whom consent to removal is required.

13. A true and correct copy of this Notice of Removal will be served upon all parties and filed with the Clerk of the 120th District Court for El Paso County, Texas in accordance with 28 U.S.C. § 1446(d).

**WHEREFORE**, Defendant Macy's West Stores, Inc. respectfully requests that this action be removed to the United States District Court for the Southern District of Texas.

Respectfully submitted,

**SCOTTHULSE<sup>PC</sup>**  
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**CERTIFICATE OF SERVICE**

I hereby certify that I filed this document electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing on this 13<sup>th</sup> day of November, 2019:

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/s/ M. Blake Downey  
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